Supreme Court of the United States

October Term, 1976
No. 76-610

STEVEN RYAN, *et al.*,
Petitioners,

vs.

AURORA CITY BOARD OF EDUCATION, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION

JOHN F. LEWIS
JAMES H. WOODRING
JOHN T. MEREDITH
SQUIRE, SANDERS & DEMPSEY
1800 Union Commerce Building
Cleveland, Ohio 44115
(216) 696-9200
Attorneys for Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

Supreme Court of the United States

October Term, 1976
No. 76-610

STEVEN RYAN, *et al.*,
Petitioners,

vs.

AURORA CITY BOARD OF EDUCATION, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION

In support of their Petition for Certiorari, Petitioners assert that the Court below decided an important question of state law in a way inconsistent with decisions of Ohio state courts. Further, other grounds advanced by Petitioners in support of certiorari presuppose that their state law theory is correct. Respondents vigorously disputed Petitioners' interpretation of state law in Respondents' Brief in Opposition to Certiorari, filed on December 2, 1976. (See Respondents' Brief at pp. 15-18.)

Since Respondents' Brief was filed, yet another Ohio state court has decided the state law question at issue here in the same manner as the Court below. The case is

Chris Depas, Plaintiff-Appellant v. Highland Local School District Board of Education, Defendant-Appellee, Court of Appeals for the Ninth Judicial District, C.A. No. 657 (December 15, 1976), reprinted in the appendix to this Supplemental Brief.

The plaintiff in *Depas,* like Petitioners herein, was employed by a board of education on a "limited contract". As in this case, the plaintiff's contract had been nonrenewed in accordance with Section 3319.11 of the Ohio Revised Code. However, like Petitioners, the plaintiff claimed a right to reappointment because the board of education allegedly had failed to comply with its own policies when it decided not to renew his contract.

The *Depas* court granted summary judgment to the defendant board of education for exactly the same reason that the Courts below granted judgment after trial to Respondents in the instant case. The court stated:

> "Boards of education are creatures of statute and have only such jurisdiction as the statutes confer. They cannot confer upon themselves further jurisdiction or authority. See, Verberg v. Board of Education of the City School District of Cleveland, 135 Ohio St. 246 (1939). Thus, a board of education can neither limit nor enlarge its statutory power pursuant to R. C. 3319.11 not to re-employ a teacher on a limited contract by self-imposing a requirement that the re-employment of a principal or teacher shall be determined by specified factors other than the one statutory requirement that the board give written notice of non-renewal before April 30."

Clearly, the *Depas* case is directly on point and further supports Respondents' contention that the writ of certiorari should be denied.

CONCLUSION

For reasons set forth herein, and in Respondents' Brief in Opposition to Certiorari, Respondents respectfully submit that the writ of certiorari should be denied.

Respectfully submitted,

JOHN F. LEWIS
JAMES H. WOODRING
JOHN T. MEREDITH
SQUIRE, SANDERS & DEMPSEY
1800 Union Commerce Building
Cleveland, Ohio 44115
(216) 696-9200
Attorneys for Respondents

APPENDIX

DECISION OF THE COURT OF APPEALS IN DEPAS V. HIGHLAND LOCAL SCHOOL DISTRICT BOARD OF EDUCATION

(Dated December 15, 1976)

No. 657

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO)
) ss:
MEDINA COUNTY)

CHRIS DEPAS,
Plaintiff-Appellant,

v.

HIGHLAND LOCAL SCHOOL DISTRICT BOARD OF EDUCATION,
Defendant-Appellee.

APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS OF MEDINA COUNTY, OHIO
CASE NO. 30786
75 CIV 1004

DECISION AND JOURNAL ENTRY

This cause was heard October 28, 1976, upon the record in the trial court and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

PER CURIAM.

Chris Depas, the plaintiff-appellant, was employed by the defendant-appellee, the Highland Local School District Board of Education (hereinafter the Board), under a one year limited contract as a principal for the 1974-75 school year. The contract expired June 30, 1975.

For purposes of this appeal, we assume that at the time of his employment the Board had adopted a series of employment policies relating to the employment of teachers and administrative personnel. These policies provided in part that the re-employment or promotion of a principal or teacher was to be determined by certain enumerated factors, nine in number.

Prior to April 30, 1975, the Board, upon the recommendation of the County Superintendent of Schools, voted unanimously not to renew Depas' contract as a principal for the 1975-76 school year. Depas was notified in writing before April 30, 1975, of the Board's decision.

Contending that the Board's decision was made without evaluation or considering his performance in accordance with its own employment policies, Depas filed suit seeking reinstatement as principal and for money damages. The Board answered and filed a motion for summary judgment. Affidavits were filed; a hearing was had; briefs were then submitted after which the referee, hearing the matter, recommended that the motion be granted. The court adopted the recommendations and entered judgment accordingly. Depas appeals and says the trial court erred:

"1. * * * in accepting the referee's recommendations and in entering summary judgment for the Board.

"2. * * * in concluding that (the Board's) nonrenewal of (his) teaching contract without adhering to its

duly adopted employment policies did not unconstitutionally deprive (him) of continued employment with the * * * Board."

These assignments overlap and are considered together.

Basically, Depas contends that the duly adopted employment policies of an Ohio educational system become an integral part of the employment contract of employees of the system, and that such policies must be considered and followed by the system before any action is taken which affects the employees' job status. Depas argues that where a board of education adopts policies relative to the re-employment of its employees it creates in those employees a constitutional property interest in their jobs and an expectancy of re-employment which cannot be destroyed by a board of education unless it complies with all the procedural requirements set forth in those policies. He cites *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972) and *Perry v. Sindermann*, 408 U.S. 593 (1972) to support his position.

Ohio has established a statutory tenure system. Under that system a teacher employed under a limited contract, and not eligible to be considered for a continuing contract, is not entitled to re-employment if the board of education, acting upon the recommendation of the school superintendent, gives that teacher a written notice on or before April 30 that he will not be re-employed. R.C. 3319.11.

Depas was employed as a principal under such a limited contract. For purposes of tenure "teacher" includes "principal." R.C. 3319.09. He received written notice on or before April 30 of the Board's intent not to re-employ him in the position. Thus, under statutory tenure provisions, his contract was properly terminated unless the Board's policy rules relative to re-employment became a

part of his contract and thereby gave him some constitutional property interest in his job and an expectancy of re-employment.

In *Ryan v. Aurora City Board of Education*, 540 F. 2d 222, 227 (6th Cir. 1976), the court said:

> "* * * We hold, however, that a non-tenured teacher has no 'expectancy' of continued employment, whatever may be the policies of the institution, where there exists a statutory tenure system. (Citations omitted). Since property interests are created by state law and not the Constitution, * * * the fact that the State limits the guarantee to only tenured teachers, necessarily negatives any property interest.
>
> "* * *."

Boards of education are creatures of statute and have only such jurisdiction as the statutes confer. They cannot confer upon themselves further jurisdiction or authority. *See, Verberg v. Board of Education of the City School District of Cleveland*, 135 Ohio St. 246 (1939). Thus, a board of education can neither limit nor enlarge its statutory power pursuant to R.C. 3319.11 not to re-employ a teacher on a limited contract by self-imposing a requirement that the re-employment of a principal or teacher shall be determined by specified factors other than the one statutory requirement that the board give written notice of non-renewal before April 30. See, *Ryan, supra.*

Additionally, under Ohio law, principals are not entitled to continuing contracts pursuant to R.C. 3319.02. *See, State ex rel. Saltsman v. Burton*, 154 Ohio St. 262 (1950) and *State ex rel. Saltsman v. Burton*, 156 Ohio St. 537 (1952).

For these reasons, we reject both assignment of error and affirm the judgment.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the Court of Common Pleas to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals, at which time the period for review shall begin to run. App. R. 22(E).

Costs taxed to appellant.

Exceptions.

/s/ WILLIAM H. VICTOR
Presiding Judge for the Court

MAHONEY, J. and BRENNEMAN, J. concur.